

ALCOHOLIC BEVERAGE LICENSE TYPES

Numerical Code Type

- 1 Beer Manufacturer
- 2 Wine Grower
- 3 Brandy Manufacturer
- 4 Distilled Spirits Manufacturer
- 5 Distilled Spirits Manufacturer's Agent
- 6 Still
- 7 Rectifier
- 8 Wine Rectifier
- 9 Beer and Wine Importer
- 10 Beer and Wine Importer's General
- 11 Brandy Importer
- 12 Distilled Spirits Importer
- 13 Distilled Spirits Importer's General
- 14 Public Warehouse
- 15 Customs Broker
- 16 Wine Broker
- 17 Beer and Wine Wholesaler
- 18 Distilled Spirits Wholesaler
- 19 Industrial Alcohol Dealer
- 20 Off-Sale Beer and Wine
- 21 Off-Sale General
- 22 Wine Blender
- 23 Small Beer Manufacturer Exclusively
- 24 Distilled Spirits Rectifier's General
- 25 California Brandy Wholesaler
- 26 Out-of-State Beer Manufacturer's Certificate
- 27 California Winegrowers Agent
- 28 Out-of-State Distilled Spirits Shipper's Certificate
- 29 Winegrape Grower's Certificate
- 40 On-Sale Beer
- 41 On-Sale Beer and Wine/Bona Fide Public Eating Place
- 42 On-Sale Beer and Wine for Public Premises
- 43 On-Sale Beer for Train
- 44 On-Sale Beer for Fishing Party Boat
- 45 On-Sale Beer and Wine for Boat
- 46 On-Sale Beer and Wine for Airplane
- 47 On-Sale General/Bona Fide Public Eating Place
- 48 On-Sale General for Public Premises
- 49 On-Sale General for Seasonal Business
- 50 On-Sale General for Club
- 51 Club
- 52 Veteran's Club
- 53 On-Sale General for Train and Sleeping Car
- 54 On-Sale General for Boat
- 55 On-Sale General for Airplane
- 56 On-Sale General for Vessel of More than 1,000 Tons Burden
- 57 Special On-Sale General
- 58 Caterer's Permit
- 59 On-Sale Beer and Wine for Seasonal Business
- 60 On-Sale Beer for Seasonal Business

- 61 On-Sale Beer for Public Premises
- 62 On-Sale General/Bona Fide Eating Place
Intermittent Dockside License for Vessels of More
than 15,000 Tons Burden
- 63 On-Sale Beer and Wine for Hospital
- 64 Special On-Sale General Theater
- 65 Special On-Sale Beer and Wine Symphony
- 66 Controlled Access Cabinet Permit
- 67 Bed and Breakfast Inn
- 68 Portable Bar
- 69 Special On-Sale Beer and Wine Theatre
- 70 On-Sale General – Restrictive Services
- 75 On-Sale Brew Pub/Restaurant
- 76 On-Sale General Maritime Museum Association
- 77 *Event Permit (May be issued to on-sale general and
on-sale beer and wine licensee once each calendar
quarter)
- 78 On-Sale General Wine, Food and Art Culture
- 79 Certified Farmers Market Sales Permit
- 80 Special On-Sale General Bed and Breakfast Inn
- 81 Wine Event Permit

ADVERTISING SPECIALTIES

Concessionaires and caterers have permanent licenses and are considered by ABC to be permanent licensees for most purposes.

ADVERTISING – Business and Professions Code Section 25503(h) prohibits an alcoholic beverage supplier from paying money, giving or furnishing anything of value for the privilege of placing or painting a sign or advertisement on or in any licensed premise. Further, the law prohibits a supplier from compensating a third party (advertising agency, etc.) for placing advertising on behalf of the supplier. Current law does contain several exceptions that permit beer manufacturers and other specified suppliers, but not wholesalers, to purchase advertising space and time from specified on-sale licensees (certain sports arenas, stadiums, auditoriums, theaters, motion picture studios, entertainment parks, zoos and aquariums). In addition, many sponsorship agreements contain a provision for sponsors' signage to be placed in the venue. Such agreements should be entered into only with an unlicensed party responsible for the venue. A separate concessionaire or caterer must hold the retail license.

Advertising Specialties are divided into two categories:

- 1) **Retail Advertising Specialties** – these are items that are useful to the retailer in the normal conduct of the retailer's business. Examples: trays, coasters, coin mats, napkins, thermometers, jiggers, clocks, stirring spoons, pouring spouts, sponges, towels, etc.
- 2) **Consumer Advertising Specialties** – items that originate with the supplier for ultimate distribution to the public. Examples: key chains, bottle openers, matches, recipe cards, pamphlets, pencils, pens, hats, t-shirts, etc. They may NOT be items which appeal to minors, such as coin banks, toys, balloons, etc.

Advertising Specialties:

- Consumer Advertising Specialties are a permitted exception under Business and Professions Code Section 25600 and ABC Rule 106(e)(2), subject to monetary limitations.
- Retail Advertising Specialties are permitted for wine and distilled spirits only under Business and Professions Code Section 25600(c).
- Must bear conspicuous advertising required of a sign (manufacturer's name, brand name, slogan, trademarks, or other symbols associated with the manufacturer)
- May be sold or given free of charge by a supplier to a retail licensee
- Advertising specialties furnished free from the supplier to the retailer may not be sold by the retail licensee, nor may a retailer be paid or credited by the supplier for distribution services
- Consumer advertising specialties must be for unconditional distribution to the general public
- Suppliers must keep and maintain records for a 3 year period of all items furnished to retailers

PERMITTED VALUES	BEER	WINE	DISTILLED SPIRITS
<i>Retailer Advertising Specialties</i> (supplier to retailer)	Prohibited per §25501, except acrylic table tents and paper coasters subject to size and cost restrictions	\$50 per brand per year	\$50 per brand per year
<i>Consumer Advertising Specialties</i> (supplier to retailer, for redistribution)	\$.25 per unit, \$15 aggregate per year	\$1 per unit, no aggregate	\$5 per unit, no aggregate
<i>Consumer Advertising Specialties</i> (supplier or retailer to consumer)	\$.25 per unit	\$1 per unit	\$5 per unit

AGE OF MAJORITY (When Are You Actually 21?)

From 1872 until 1992 the Common Law Rule prevailed to determine a person's age. Since the enactment of Civil Code 26 in 1872 age of minority was calculated "from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority". This meant that a person attained any given age on the earliest moment of the day preceding an anniversary of birth. The rationale was that a person is in existence on the day of his or her birth and that on the first anniversary he or she has lived one year and one day.

In 1992 there was a decision from the California District Court of Appeal in *People v. Johnson* that changed the Common Law Ruling to specify "on his birthday rather than on the day before his birthday".

For the purpose of the ABC Act and Section 25658 B&P Code (sales to minors) a person attains the age of 21 on his or her twenty-first birthday, not the day before.

AGE REQUIREMENTS TO SELL/SERVE ALCOHOLIC BEVERAGES

On-sale Licensees:

You may not employ a person under age 21 on the portion of any premises which is primarily designed and used for the sale and service of alcohol for consumption on the premises.

Restaurants: In a bona fide public eating place, persons age 18 or older may serve alcohol in an area primarily designed and used for the sale and service of food for consumption on the premises as an incidental part of their overall duties. Bartenders and cocktail waitresses must be 21.

Concession Stands: A person who is at least age 18 but not yet 21 may serve alcohol, as an incidental part of his or her duties, at a fixed concession stand that sells food products, soft drinks, and alcohol.

Pizza Parlors: A person under age 21 may not serve alcohol while working behind a fixed counter where only soft drinks, alcohol, and other beverages are dispensed and food items are served at another counter within the premises.

Off-Sale Licensees:

Persons age 18 and older may sell alcohol unsupervised. Persons age 17 and younger may sell alcohol if under the continuous supervision of a person age 21 or older. "Continuous supervision" means that an adult person must be present on the premises to provide direction and assistance, if needed.

Establishments engaged in the concurrent sale of motor vehicle fuel shall abide by the following conditions: Employees on duty between the hours of 10 p.m. and 2 a.m. who sell alcoholic beverages shall be at least 21 years of age.

ALTERNATING PROPRIETORSHIPS AND PREMISES DESIGNATIONS

An alternating proprietor (AP) arrangement is a small winery operation located within an existing winery facility (commonly referred to as the "host" winery.) The AP uses the facilities and equipment of the host winery to make its own wine. Typically, the host winery assists the AP in producing its wine and the AP usually stores his/her wine on the premises of the host winery, but it may be transferred to another bonded premises. The AP must apply for its own Type 02 license from us and a bonded winery permit from the Alcohol and Tobacco Tax and Trade Bureau (TTB). The privileges of a Type 02 license are the same when operating as an alternating proprietor except that AP's rarely conduct winetastings on the host winery's premises.

Recently, the TTB determined that establishing a physical separation and dedicated premises for each alternating proprietor is not required for all AP applications. Where no separation/dedication is required, then there is no need for the host to reduce its existing premises and the AP is no longer required to define a dedicated premises on the Form 257-NR. Form 257-NR should show the whole facility of the host winery when diagramming an AP. It is not unusual to have multiple alternating proprietors at one host premises.

In those cases where TTB deems that such separation/dedication is required, or where the host winery wishes to physically establish a separate premises for each alternating proprietor, then each AP applicant must complete the diagram portion of Form 257-NR. Likewise, the host winery should complete a new diagram reducing its existing licensed premises. If there is a dedicated premises for the AP, then the dedicated area and alternating areas should be clearly defined. This is usually done by color coding the alternating areas differently from the dedicated premises of the AP. The areas where the wine is produced become the "alternating" areas shared by each proprietor. These "shared" areas may consist of a crush pad, wine processing tanks, barrel areas, bottling lines, etc. If there is a dedicated premises, it usually has barrels containing wine that is in the fermentation or aging process or it may have cases of finished wine. In either situation, neither federal nor state excise taxes have been paid on this wine. This is also known as wine "in-bond". Wine that is moved in and out of these areas must be documented by the wineries and reported to the TTB. In this manner, the TTB is able to identify whose wine is located in a specific area for a specific period of time.

While Rule 64.2(c), CA Code of Regulations, exempts winegrowers and brandy manufacturers from the diagram requirement unless they conduct either (1) winetastings; or (2) retail sales of wine/brandy, it is preferable to ask all applicants to complete both sides of the 257-NR. In any event, the reverse side of Form 257-NR describing the proposed premises operation must be completed.

The alternating proprietor arrangement has been approved by TTB. Information on this arrangement is contained in the Federal Register Volume 55, No. 118 dated 6/19/90 listed under Rules and Regulations #24.136. Alternating proprietorship is also acceptable for beer and distilled spirits manufacturers.

BANNERS

A distributor may provide, at no charge, interior banners advertising beer that bear conspicuous notice of the beer manufacturer's name, brand name, trade name, slogans, markings, trademarks, or other symbols commonly associated with and generally used by the beer manufacturer in identifying the beer manufacturer's name or product.

If a banner, whether for interior or exterior use, is customized or personalized for a specific retailer, it must be sold to the retailer at fair market value – generally cost plus 6% - including the cost of customization. (Business and Professions Code Section 25611.1)

Exterior banners must be sold to permanent licensees. Suppliers may provide nonpermanent interior and exterior banners to temporary, one-day licensees at no charge (ABC Rule 106(h)). Exterior banners advertising alcoholic beverages may not be placed on a fuel island or across any public thoroughfare, such as a street or sidewalk. (Business and Professions Code Section 25600, ABC Rule 106)

BAR PROMOTIONS

Business and Professions Code Sections 25600(a)(1), 25500(a)(2), 25502(a)(2) and 25503(b) generally prohibit licensees from giving away free goods or things of value in connection with the sale or distribution of alcoholic beverages.

Distributors may not provide samples to consumers except as provided for in Section 25503.5(c), and no money, services or anything of value may be furnished to retailers in exchange for agreeing to participate in a promotion of the distributor's products. Only those consumer advertising specialties authorized by ABC Rule 106 may be given. Note that value limits are not to exceed \$.25 cost per item and a maximum of \$15 per licensee per calendar year for beer, \$1 per item for wine and \$5 per item for spirits.

The distributor's representative may discuss and explain the product, furnish allowable signage and decorations, and hand out advertising specialties. Distributors and retailers may offer coupons that provide a cash rebate to consumers when they purchase a drink provided that it is not a full purchase price refund. A retailer may offer a price reduction for the product being promoted if it is the sole decision of the retailer.

If the distributor provides entertainment, the promotion may not be advertised outside of the licensed premises. If the event is advertised outside of the licensed premise, the retailer must pay all costs (advertising, modeling fees and travel expenses) incurred for the entertainment.

Distributors should be cautious not to make repeat visits to the same premises. Routine or frequent promotions at the same premises may have the effect of providing something of value to a retail licensee, in violation of Business and Professions Code Section 25500.

CERTIFIED FARMERS' MARKET SALES PERMITS (TYPE 79)

Section 23399.4 of the Business and Professions Code allows winegrowers to sell a prescribed amount of their wine off-sale at a certified farmers' market (CFM).

The Department has developed a simplified application procedure for licensed winegrowers to obtain this new permit. The application fee is \$40.00 and the permit is issued on a fiscal year basis. Permits must be renewed annually along with the master winegrower's license. Applications for the CFM permit are available from any district office of the Department.

Before making application for a Type 79 permit, the Department recommends that the winegrower obtain the required product certificate(s) from the County Agricultural Commission and permission from the CFM to sell wine at that particular site. The California Department of Food and Agriculture Direct Marketing office (916/654-0919) can provide information concerning the CFM program. The California Federation of Certified Farmers' Markets also provides CFM information on the Internet at www.cafarmersmarkets.com.

Winegrowers are reminded that Section 23399.4 contains a number of requirements/limitations as summarized below:

- Must hold an active winegrower's license.
- Only the licensee, a member of the licensee's family, or an employee of the licensee is authorized to sell wine off-sale at CFM locations. Such authorization does not extend to other persons, such as agents of the winegrower.
- Wine sold at the CFM must be produced and bottled by the winegrower entirely from grapes grown by the winegrower. Wine that is produced and bottled by a winegrower when any portion of the grapes used are not grown by the winegrower cannot be sold at a CFM.
- No winetastings are permitted at a CFM.
- The permit is issued only for a CFM location. Questions concerning whether a particular location has been certified should be directed to the local County Agricultural Commission.
- A separate permit must be obtained for each CFM location where a winegrower wishes to sell wine. There is no limit on the number of permits which may be held by a single winegrower; however, each permit costs \$40.00.
- Licensed winegrowers eligible for a CFM sales permit shall not sell more than 5,000 gallons of wine annually pursuant to all CFM sales permits held by a single winegrower.
- Licensed winegrowers shall report total CFM wine sales to the department on an annual basis. The report may be included within the annual report of production submitted to the department, or pursuant to any regulation as may be prescribed by the department.

CONSIGNMENT SALES

Consignment sales are prohibited by Business and Professions Code Section 25503 and Title 27 Code of Federal Regulations, Part 11. Consignment sales are defined as a sale or delivery of alcoholic beverages under an agreement whereby title to the alcoholic beverages is retained by the seller or whereby the licensee receiving the alcoholic beverages has the right at any time to return them to the original seller.

CONTESTS

Amateur or Professional Organizations

Suppliers may sponsor contests by giving money to amateur or professional organizations, provided that the supplier does not require the exclusive sale of his or her products at the event; that the supplier's products are not exclusively sold at the event; and that entry to the event is not conditioned upon purchase of the supplier's products. The organizers of a contest may purchase award prizes from the distributor at a fair market price. Sponsorship monies must be given to an amateur or professional organization, an unlicensed entity.

Nonprofit, Charitable Organizations

Suppliers may give financial and other support to communities and bona fide nonprofit organizations in connection with contests (golf tournaments, etc.) hosted by the organization to raise funds for their cause. No benefit may accrue to a permanent licensee. Financial support may not be conditioned on the sale of the supplier's product. A retail licensee may not solicit support on behalf of the nonprofit organization.

Retailer-Sponsored Contests

Retailers may sponsor contests at their premises by providing prizes to contestants, provided that the prizes are **not alcoholic beverages**, that the contest is **not conditioned on the purchase, sale or consumption of alcoholic beverages**, and that the competitive event does not involve consumption of alcoholic beverages.

CORKAGE FEES

There is no overall prohibition that prevents a business, which is properly licensed, from allowing an adult customer to bring in his/her own alcoholic beverages and have those beverages served to guests. Restaurants who permit this activity generally charge a "corkage fee," but this is not mandatory. The licensee remains responsible for any violations of law that might occur, such as furnishing alcohol to minors or to obviously intoxicated patrons.

COUPONS

In *Gonzales v. ABC* (1984) 151 Cal. App. 3d 172, the court held that a straight rebate on the purchase price of alcoholic beverages does not constitute a "premium, gift, or free goods" within the parameters of Section 25600 and Rule 106.

More recently, the court of appeal extended the *Gonzales* reasoning to "contingent rebate" promotions, in which the consumer gets a rebate on an alcoholic beverage product only with the purchase of some other non-alcoholic beverage item. In short, the court held that, notwithstanding the co-purchase requirement, the promotion is nothing more than a rebate, and is thus permissible pursuant to *Gonzales*. Because a rebate is not a "premium, gift, or free goods," it does not fall within the prohibition of Section 25600, and no regulation of the Department can change that (i.e., if permitted under law, Rule 106 cannot make it illegal). (*ABC V. Miller* (2002) 104 Cal. App. 4th 1189.)

ABC's current position on coupons and rebates on alcoholic beverages is that, unless the rebate results in the giving of something free, it is permissible. It makes no difference whether the rebate is on the alcoholic beverage or some other item purchased in conjunction with the alcoholic beverage. For example, if the rebate is for \$2 off a bag of ice with the purchase of a case of beer, but the non-rebate price of the ice is only \$1.50, ABC would consider this to be a violation of Section 25600 and Rule 106 (i.e., "free goods"). However, if, using that same example, the coupon specified that the rebate was for \$1 off the ice and \$1 off the beer (i.e., it is attributed to each item included in the rebate promotion), there would be no "free goods" violation. Likewise, if the full rebate was off the beer (which, for purposes of this example, costs more than \$2), there would be no violation.

Cross merchandising or providing a coupon that "gives" consumers a free product, if they purchase an alcoholic beverage, is a "gift associated with the purchase of alcoholic beverages" and is a violation of ABC Rule 106 and Business and Professions Code Section 25600, if the value of the merchandise given exceeds the statutory limit for consumer giveaways (i.e., \$.25 for beer, \$1 for wine, or \$5 for distilled spirits).

Any coupon promotion, including paperless scanner rebates, must be structured to show a direct cash rebate to the consumer and must be supported by a verifiable audit trail. Payments to retailers by distributors are generally prohibited by Business and Professions Code Section 25600. ABC has permitted payments to retail licensees for coupon promotions if those payments are to reimburse the retailer for cash rebates to consumers as permitted under the *Gonzales & Co. v. Dept. of Alcoholic Bev. Control* (1984) 151 Cal. App. 3d 172 decision. Distributors' records must contain sufficient information to verify the nature of any such payments – even when the payment is made to a third party,

such as a clearinghouse. Distributors should not make any payment to retailers unless they also retain for their records information to verify that payments are made to reimburse for rebates directly to consumers.

The retailer may not retain any portion for handling fees. A supplier who gives coupons to a retailer, intending that the retailer will pocket the rebate or a portion of it, or knowing from past experience that the retailer will pocket the rebate, and hoping thereby to induce the retailer to promote his or her products, is in violation of the law.

COUPONS – ELECTRONIC SCANNER PROGRAMS “SCANBACKS”

ABC conditionally approved a supplier-sponsored price promotion program in which consumers receive an electronic paperless instant discount at point of sale, provided that the supplier agrees to provide certification regarding calculations and delivery of rebates and reimbursements, and a contractual mechanism to monitor retailer compliance and adherence to the following procedures:

- The participating retailer actually provides the consumer to whom it sold the product the full amount of the electronic instant rebate for which reimbursement is requested.
- There is conspicuous point-of-sale notifying consumers of the scanner rebate offer; notice shall be displayed at all times during which the rebate program is being offered to consumers and shall include the alcoholic beverage product that the rebate applies to; the amount of the instant rebate; and that the rebate is to be given electronically at the cash register.
- A supplier may give no monies or other compensation, directly or indirectly, to a retailer in exchange for the retailer's participation in the scanner price rebate program.
- No monies or other things of value may be furnished, directly or indirectly, by a participating supplier to the retailer in connection with the program's advertising or any other aspect of the program's operation except that a supplier may reimburse the retailer for the face value of its instant redeemable coupons that represent actual sales to the retailer's customers.
- The scanner rebate program must be made available to all retailers in the trading area involved on the same terms and conditions.

DECORATIONS

Suppliers may give decorations, such as corrobuff, tinsel, foil or bunting with a value of up to \$50 per premises at any one time, to off-sale retailers (ABC Rule 106). The decorations must have no intrinsic or significant utilitarian value or secondary value other than as embellishments (ABC Rule 106(b)(4)). Suppliers may not pay or credit the retailer for the display or for any expense incidental to its operation (such as electricity). Decorations may not refer to the retailer's name or business (ABC Rule 106(f)).

Items not permitted to be given to a retail licensee by this section may be sold or rented to the retailer by the distributor.

Note that this applies to items that are generally incidental to a display. Most other items, such as pennants and table toppers that contain conspicuous brand advertising and are permitted to be given free of charge as signage.

DELIVERY OF ALCOHOLIC BEVERAGES

Business and Professions Code Section 25633 provides that alcoholic beverages may be delivered from 3 a.m. to 8 p.m. Monday through Saturday. Sunday deliveries are prohibited; however, a distributor may sell to a retailer at the dock on Sunday.

A retailer must take delivery or possession of alcoholic beverages sold by a distributor in order for the transaction to be considered a sale. The retailer must receive the product at his or her licensed premises. In order to store the alcoholic beverage product at a location other than a licensed premises, the retailer must be issued a Private Warehouse Permit from ABC. Retail licensees may also use the services of a public warehouse for storage purposes.

In order to accommodate venues that do not have enough storage, a distributor may rent a trailer to a concessionaire for auxiliary storage. The rental of a trailer makes it the “temporary property” of the concessionaire, thus prohibiting the return to the distributor of any unused beer at the conclusion of the event.

A distributor's personnel may rotate and replenish the keg lines once each day, and may also have personnel "trouble shoot" a failed line. A distributor's employees may not remove empties or retap fresh kegs during the course of the day. Employees of the concessionaire must perform that activity. If the concessionaire does not have the staff or expertise to service the kegs, the concessionaire may hire a distributor's employee at fair wage to perform those duties.

(Also see Temporary One-Day Licenses)

DIRECT SHIPMENTS AND INTERNET SALES OF ALCOHOLIC BEVERAGES

Direct Shipments:

This activity involves shipments of alcoholic beverages made directly to California consumers that originate from points outside of this state. "Wine (or beer)-of-the-month club" is a common format used by companies engaged in direct shipping.

Direct Shipments are regulated by California's importation and tied-house laws.

California's regulatory scheme for the importation, sale and distribution of alcoholic beverages is based on a legally structured "three-tier system" (i.e., segregated distribution from licensed producer/importer to wholesaler to retailer). The laws which implement this distribution structure permit alcoholic beverages to be brought into California only when the beverages are consigned and delivered to an importer licensed by this Department.

Direct interstate and international shipments of alcoholic beverages to consumers in this state are prohibited. Two exceptions to this prohibition exist under Sections 23661.2 and 23661.3 of the California Business and Professions Code. Section 23661.2 authorizes limited direct shipments of wine under specified conditions. It allows unlicensed adults in this state to receive no more than two cases of wine (no more than nine liters each case) per month for personal use and not for resale from another state which allows adults of that state to receive comparable shipments of wine from California. Section 23661.3 authorizes a person licensed as a winegrower in another state, who obtains a Wine Direct Shipper Permit (Type 82) from the Department, to sell and ship wine directly to a California adult resident for personal use and not for resale. There is no limit as to how much wine may be shipped to a given individual under these circumstances. The annual fee for the permit is \$10. The application form and instructions are available on the Department's Web site (www.abc.ca.gov). Direct interstate or international shipments of beer and distilled spirits to unlicensed adults residing in California are prohibited.

Internet Sales and Marketing:

The use of the Internet as a sales and marketing tool is becoming widespread in the alcoholic beverage industry. In the retail sector, Internet-based companies with little or no physical presence in California are seeking to offer alcoholic beverages for sale to consumers in this state.

An Internet-based retail business cannot legally sell alcoholic beverages in California unless it obtains a Department-issued license. An inability to establish and maintain a sufficient physical presence in this state is problematic from a licensing standpoint. In order to obtain the required retail license, an Internet business would need to operate in conjunction with a "brick and mortar" retail store pursuant to Rule 27 CCR. (All retail licensees must comply with Rule 27, except for wholesalers holding an off-sale beer and wine license at the wholesale premises.)

Another potentially problematic area for Internet-based retailers is inventory. Under this state's distribution system, retail licensees are required to purchase their stock of alcoholic beverages from in-state sources, i.e., licensed wholesalers, winegrowers or beer manufacturers. And, under Rule 27, a retailer's alcoholic beverage inventory must be "displayed and available for convenient inspection and purchase by the general public."

Under the ABC Act, only California-licensed retailers, winegrowers and beer manufacturers are authorized to make direct sales of their packaged alcoholic beverages to adult consumers in this state. The Department has determined as a matter of policy that it is permissible for those licensees to solicit and accept purchase orders for their alcoholic beverage products from consumers by direct mail, telephone, or on-line computer. Regardless of how orders for alcoholic beverages are processed and fulfilled, licensees must comply with all applicable laws and rules, which include storage, delivery and recordkeeping requirements. (Sections 23357, 23358, 23393 and 23394 B&P).

DISPLAYS AND DISPLAY ENHANCEMENTS

Displays

There are two types of displays that are permitted to be furnished to off-sale licensees by alcoholic beverage suppliers (ABC Rule 106).

- (1) **Temporary Floor Display** – The exhibition of beer, wine or distilled spirits by means of racks, bins, casks, shelving and similar devices from which alcoholic beverages are displayed and sold. Such displays shall bear conspicuous advertising required of a sign. “Temporary” means a period of time not exceeding 4 months. This type of display must sit on the floor and cannot be suspended from the ceiling or placed on a counter. ABC believes that cut cases and/or floor stackings of alcoholic beverages fit within the definition of “temporary floor displays.” Displays themselves cannot have secondary or utilitarian value. For instance, a temporary floor display that also refrigerates or cools alcoholic beverages must be sold or rented at fair market value by a wholesaler to a retailer.
- (2) **Window Display** – The exhibition in windows of any or all of the following: permitted signs, promotional material, decorations, and the advertised alcoholic beverage product(s). Unlike the “floor display,” a window display may stay in place for more than 4 months and there is no requirement for the display to actually hold the advertised alcoholic beverage(s). Displays themselves cannot have secondary or utilitarian value

Display Enhancements

These are generally defined as items that complement a permitted display, such as sports or recreational equipment, barbecues, umbrellas, boats, motor vehicles, and similar paraphernalia that have intrinsic or utilitarian value. These items need not be brand-identified. Display enhancements that have been rendered permanently unusable may be furnished free to retailers. If any item retains its intrinsic or utilitarian value then it must be rented or sold to the retail licensee (Business and Professions Code Section 25503.1).

DONATIONS OF ALCOHOLIC BEVERAGES

Business and Profession Code Section 25503.9 authorizes the following:

Winegrower: May give or sell wine to a nonprofit organization listed in subsections a, b and c of Section 25503.9.

Beer Manufacturer: May give or sell beer to a nonprofit organization listed in subsections a, b and c of Section 25503.9.

Distilled Spirits Manufacturer: May give or sell distilled spirits to a nonprofit organization listed in subsections a, b and c of Section 25503.9.

Licensed Importer: May give or sell beer, wine or distilled spirits to a nonprofit organization listed in subsections a, b and c of Section 25503.9.

Retailers: Generally are prohibited from donating alcoholic beverages. There are some limited exceptions listed under Section 24045.2.

ENTERTAINING RETAIL LICENSEES AND THEIR EMPLOYEES

Distributors may provide food and beverages to retailers and their employees at business meetings, if the employees are involved in the retailer’s business decisions. A distributor also may provide admission tickets to athletic events and other entertainment, if the principals or employees to whom they are provided are involved in the retail licensee’s business decisions. (Business and Professions Code Section 25503.27)

EVENT SPONSORSHIPS

It is a violation of ABC law for an alcoholic beverage supplier to participate in a sponsored promotion by a permanent retail licensee, be it a nonprofit or for-profit activity. ABC has consistently ruled a supplier’s involvement in promotions involving permanent licensees to be illegal if the retailer directly or indirectly gains a benefit from the supplier’s sponsorship of the event. Although the sponsorship money may ultimately go to a nonprofit organization, ABC contends that a retail licensee may benefit from the exposure provided (in part) by a supplier’s sponsorship money, thereby providing “something of value” to a retail licensee.

Distributors and brewers may sponsor contests by giving money to amateur or professional organizations, provided that the supplier's products are not exclusively sold at the event, and that entry to the event shall not be conditioned on purchase of the supplier's products (ABC Rule 106).

Distributors and brewers may also provide sponsorship dollars and services for nonprofit charitable events as long as the event does not benefit a permanent licensee and sponsorship is not conditioned on sale of the supplier's products.

Sponsorship agreements that contain a provision for sponsors' signage to be placed in the venue should be entered into only with an unlicensed party responsible for the venue. Unless the venue has a "tied-house" exemption, a separate concessionaire or caterer must hold the retail license.

FAIRS AND CONCESSIONAIRES

Concession agreements between a fair and concessionaire must be based on gross sale/profits on the sale of alcoholic beverages. It is acceptable for a concessionaire working at an unlicensed fair to have an agreement to pay the fair or landlord (which is typically a government entity) a "fee" based on gross sales. If the fair or landlord were receiving net proceeds then it would denote ownership, which would require a license.

ABC Rule 106(h) regulates alcohol supplier sponsorships of such events.

FREE ALCOHOL INDUCEMENTS AT UNLICENSED PREMISES

Giving free alcoholic beverages at a salon, dentist office, blood drive, clothing store, etc is not legal. It cannot be an inducement or feature of their package offer. Premises such as these will be considered illegal bottle clubs (Section 25604 Business and Professions Code) if free alcohol is given away.

GIFT BASKET COMPANIES

A retail gift basket business cannot legally sell alcoholic beverages in California unless it obtains a Department-issued license. The most common license types associated with such a business are the Type 20 (Off Sale Beer and Wine) or the Type 21 (Off Sale General) licenses. In order to obtain the required retail alcoholic beverage license, a business would need to operate in conjunction with a "brick and mortar" retail storefront pursuant to Rule 27 of the California Code of Regulations.

Licensed alcohol retailers must maintain inventory. Under this state's distribution system a retail licensee is required to purchase its stock of alcoholic beverages from in-state sources, i.e., licensed wholesalers, winegrowers or beer manufacturers. And, under Rule 27, a retailer's alcoholic beverage inventory must be "displayed and available for convenient inspection and purchase by the general public." A gift basket company operated from a home office via the internet in a residential area would not comply.

HAPPY HOUR PROMOTIONS

"Happy Hour" Promotions

The ABC Act does not, per se, address "Happy Hour" activities. However, it is possible that cities or counties may enact ordinances that prohibit or restrict these promotions.

Retail licensees may advertise the sale and service of alcoholic beverages. They may advertise drink prices, brand names (provided they are paying the entire cost for the ad), promotions, and "happy hour" information (prices, times, brands, etc.). While drinks may be advertised at reduced prices, these specially-priced drinks cannot be made available only to certain groups of persons (e.g., Ladies' Night specials). This violates Business and Professions Code Section 125.6.

Free/Complimentary Alcoholic Beverages

Retailers cannot offer complimentary or free alcoholic beverages, but may offer packages that include alcoholic beverages, provided the total charge to the customer covers their cost of acquisition (to prevent a free goods violation).

"2 for 1", "Buy 1, Get 1 Free"

Retailers cannot offer alcoholic beverages for on-premises consumption at “two for the price of one,” “buy one, get one free,” “all you can drink,” or under any other scheme where the expressed or implied meaning is that one customer, in order to receive a reduced price, would be required to purchase more than one drink at one time.

“Ladies Night” promotions

An advertising program, which includes an inducement for ladies to frequent licensed premises on a particular night and thereby receive meals and cocktails at reduced prices because they are “ladies” is considered discriminatory and contrary to Business and Professions Code section 125.6 and Civil Code section 51.

IMPORTATION OF ALCOHOL – COMMERCIAL USE

Alcoholic beverages can be brought into California only by common carriers and only when the beverages are consigned to a licensed importer, and only when consigned to the premises of the licensed importer or to a licensed importer or customs broker at the premises of a public warehouse licensed by this Department (Business and Professions Code 23661). Direct shipment of alcoholic beverages to California retailers and consumers is prohibited (see Section 23661.2 for wine exception). A Certificate of Compliance is required from ABC for all out-of-state vendors shipping beer into California and a Distilled Spirits Shippers Certificate is required for all vendors shipping distilled spirits into California. Section 32109 of the Revenue and Taxation Code provides that common carriers (except railroad and steamship companies) before engaging in the business of transporting shipments of alcoholic beverages into this state must register with the California Board of Equalization and make application for an interstate alcoholic beverage transporter's permit.

IMPORTATION OF ALCOHOL – PERSONAL USE

Adults (persons age 21 or older) who bring alcoholic beverages into California for *commercial or business purposes* must be licensed by the Department of Alcoholic Beverage Control (ABC).

Adults who bring alcoholic beverages into California for *personal or household use* do not need an alcoholic beverage license; however, some restrictions do apply, as explained below (Section 23661 Business and Professions Code).

Returning from a Foreign Country

Alcoholic beverages must accompany the returning traveler and may not be shipped to California at a later date.

- **Travel by Steamship or Airplane**

Adults traveling into California from a foreign country by steamship or airplane may bring with them a reasonable amount of alcoholic beverages for personal or household use. A reasonable amount is not more than 60 liters (approximately five cases). (ABC agreement with U.S. Customs)

- **Returning from Mexico**

California adult residents returning from Mexico by motor vehicle or on foot may only bring in one liter of alcoholic beverages (the duty-free amount) for personal or household use.

New California Residents

An adult who is moving to California after an extended stay in a foreign country may bring alcoholic beverages through U.S. Customs if all of the following conditions are met:

- The alcoholic beverages are shipped via common carrier (i.e., steamship, airplane, or railroad);
- The alcoholic beverages are for personal or household use only (and not for sale);
- The alcoholic beverages are a reasonable quantity by U.S. Customs' standards;
- The alcoholic beverages are with the person's unaccompanied household effects; and
- The person could not physically accompany the shipment of household effects to the United States.

Note: U.S. Customs is not obligated in any way to clear every shipment in these situations. It may exercise its own discretion on a case-by-case basis and may deny approval when justified.

Out-of-State Residents Traveling Through California

Out-of-state adult residents, who enter California from a foreign country, may arrange for their baggage containing alcoholic beverages to be continuously transported through California via common carrier. The traveler may not use the alcoholic beverages within California's borders. (Section 23109 Business and Professions Code)

Military Personnel

- **Relocating Household**

When a service member relocates his or her household effects from a foreign country to California as part of a permanent change of duty station, he or she may include alcoholic beverages only if they are for personal or household use. The Department has no objection if the alcoholic beverages are physically included with other household effects, such as clothing and furniture, or if they are shipped separately.

Note: There is no federal limit on the amount of alcohol someone may import into the U.S. for personal use, however, large quantities might raise the suspicion that the importation is for commercial purposes, and a Customs and Border Protection (CBP) officer could require you to obtain a federal import license before releasing the shipment. If so, the corresponding state license(s) would also be required. CBP is not obligated in any way to clear every shipment. It may exercise its own discretion on a case-by-case basis and deny entry when justified. If you intend to have a large quantity of alcohol shipped to you for personal use, CBP suggests that you contact the entry branch of the port where your shipment will be entering the United States to discuss your situation in advance. You should also contact the nearest office of the Department to determine whether your circumstances may require a state license.

- **Non-Relocating Household**

An adult member of the United States Armed Forces, who was or is serving outside of the United States, may ship to California the duty-free amount of four liters (three liters of which must have been manufactured or bottled within the United States).

However, when unaccompanied, the alcoholic beverages must be shipped via common carrier and consigned to a California licensed importer. (A list of licensed importers is available from ABC Headquarters in Sacramento.)

The service member may then claim the alcoholic beverages by going to the consignee's premises and showing satisfactory military identification.

Foreign Diplomats

Foreign diplomatic personnel and members of their staffs (includes majors or above of the Military Committee of NATO) may import duty-free alcoholic beverages from suppliers outside California if the shipments are sent directly to the foreign diplomat or his/her staff member. Foreign trade zones are considered to be outside California.

IN-HOME WINE PARTIES

The license which would most closely allow the privileges to conduct in-home wine sampling would be a Type 20 off-sale beer and wine license. This is a retail license, most commonly associated with that held by a retail market. It authorizes the sale of beer and/or wine to consumers for consumption off the premises where sold. Such beverages must be purchased from a licensed beer and wine wholesaler, winegrower or beer manufacturer authorized by their license(s) to sell these types of beverages. The licensee in this instance must have a physical "brick and mortar" storefront open to the general public during normal business hours that fully complies with ABC Rule 27. The in-home sampling concept would not be permitted from a home office or garage location.

With a Type 20 license, the licensee may pre-sell a sample selection of wines to the host or hostess (that is, the homeowner) who would be providing these beverages to invited guests at their home. The wine must be delivered from the licensed premises to the host/homeowner and payment must be collected prior to the event. No other product samples, other than the pre-sold samples, can be provided during the event.

Upon arrival at the home, the licensee may provide educational information to guests in attendance. This would include discussing the characteristics and virtues of the wine. Order blanks or "preference" cards can be completed by the guests and collected for sales and deliveries, at a later time, of product maintained at the licensed premises. All sales and deliveries must be made from the licensed premises. Upon completion of the event all pre-sold wine samples are the property of the host/homeowner. The licensee is prohibited from accepting returns of any unused portions of the samples.

Upon returning to the licensed premises, the licensee would be able to fill the orders taken at the in-home sampling and subsequently deliver those items from the licensed premises to the purchaser(s). Please note that the licensee cannot fill orders taken at the home from a supply maintained away from the premises, such as from a vehicle. Also, all beverages sold to the host/homeowner or their guests must be sold from product that has been lawfully purchased in advance from the above supplier(s). Such beverages cannot be delivered or drop shipped to the consumer directly from a supplier.

INSURANCE COVERAGE AND INDEMNITY AGREEMENTS

Retailer requests proof that the distributor is insured.

This request does not place any economic burden on the distributor and does not give anything of value to the retailer, since the only thing requested is proof that the distributor has obtained adequate insurance. You may provide a copy of the face sheet of an insurance policy or binder and send it to the retailer. The primary basis for objecting to such a request would be that a distributor desires to maintain confidentiality concerning its insurance status.

Retailer requests distributor to add retailer as an additional insured.

The Department of Alcoholic Beverage Control in a letter, dated August 31, 1992, states that "...alcoholic beverage suppliers may not provide liability insurance that names a specific retail licensee as the insured party...." Beer distributors should not enter into indemnity agreements with specific retail licensees. Such agreements, if executed, would place both the distributor and retailer in violation of the tied-house statutes that prohibit a gift of something of value in connection with the sale or purchase of alcoholic beverages.

Retailer requests the distributor to sign an "indemnity agreement".

Sometimes retailers ask a distributor to sign an "indemnity agreement" using a particular form that the retailer has developed. The Department suggests that a distributor should not sign such indemnity agreements because to do so would have the effect of giving advantage to selected retailers. Even if a distributor was to sign indemnity agreements whenever requested by a retailer, there are some retailers who do not request indemnity agreements, who therefore would be at a selective disadvantage. Furthermore, because each retailer develops the indemnity agreements independently, they vary significantly in scope. Some are extremely broad, some narrow. This factor also would give some retailers a selective advantage over other retailers and are deemed impermissible by the Department.

Vendor's Endorsements

The Department of Alcoholic Beverage Control has concluded that a distributor may legally furnish such "additional insured" coverage by means of a "Vendor's Endorsement" if it includes all retailers with whom the distributor deals, but not if the "additional insured" status is given selectively to particular retailers. If a distributor decides to obtain "additional insured" coverage in favor of one retailer, the distributor should simultaneously provide identical coverage to all retailers. Furthermore, the coverage provided in the insurance must be limited to the legal liability of the vendor/supplier for damages that arise from the product or the negligence of its employees.

LIMOUSINES/HOT AIR BALLOONS

Limousines

No license or permit is required for the serving of alcoholic beverages in a limousine by any person operating a limousine service regulated by the Public Utilities Commission; provided there is no extra charge or fee for the alcoholic beverages.

For the purposes of this subdivision, there is no extra charge or fee for the alcoholic beverages when the fee charged for the limousine service is the same regardless of whether alcoholic beverages are served. (Business and Professions Code Section 23399.5(a))

Hot Air Balloons

No license or permit is required for the serving of alcoholic beverages as part of a hot air balloon ride service, provided there is no extra charge or fee for the alcoholic beverages.

For purposes of this subdivision, there is no extra charge or fee for the alcoholic beverages when the fee charged for the hot air balloon ride service is the same regardless of whether alcoholic beverages are served. (Business and Professions Code Section 23399.5(b))

MANUFACTURING BEER AND WINE FOR PERSONAL USE

There is no license required from ABC to conduct the “U-Brew” concept for beer and wine provided that there are no sales of alcoholic beverages being made from the premises where this activity is being conducted. The “U-Brew” concept usually is a means to provide people with the facility, equipment and ingredients to make their own product.

Business and Professions Code Section 23356.2 gives some guidance on the topic of Home Brew. Section 23356.2 is as follows:

“No license or permit shall be required for the manufacture of beer for personal or family use, and not for sale, by a person over the age of 21 years. The aggregate amount of beer with respect to any household shall not exceed (a) 200 gallons per calendar year if there are two or more adults in such household, or (b) 100 gallons per calendar year if there is only one adult in such household.

Any beer manufactured pursuant to this section may be removed from the premises where manufactured for use in competition at organized affairs, exhibitions or competitions, including homemakers’ contests, tastings, or judgments.”

The limit for the production of wine for personal or household use is covered by Business and Professions Code Section 23013 as follows:

““Winegrower” means any person who has facilities and equipment for the conversion of grapes, berries or other fruit into wine and is engaged in the production of wine, except that any person who produces not to exceed 200 gallons of wine per year for his own consumption shall not, because of such production, be considered a winegrower within the meaning of this division.”

No amount of distilled spirits may be manufactured without a license.

MARKETING ALCOHOLIC BEVERAGES IN CALIFORNIA

A person who wishes to import and sell beer and wine to wholesalers only should apply to this Department for a beer and wine importer's general (Type 10) license. To import and sell beer and wine to retailers and wholesalers, a beer and wine importer's (Type 09) license and a beer and wine wholesaler's (Type 17) license are needed. On the other hand, if a person merely wishes to sell to California licensed importers or wholesalers and will not be establishing a business in California; in that representatives would only be in the state on a sporadic basis to make general arrangements or to do general missionary work, and he/she will not warehouse or import alcoholic beverages into California, no licenses would be required. Importation licenses are not required for companies that obtain beer and/or wine solely from within California.

Wholesalers have an added privilege of selling WINE ONLY directly to consumers via the Internet by applying for a Type 20 license see 23817.8 Business and Professions Code.

Many wholesale Internet companies work from a home location and hold a 09/17/20 combination of licenses. This allows the importation and sale, of WINE ONLY, to consumers, but also requires that the business act as a bona fide wholesaler (makes sales to retailers generally). Products must be shipped from a licensed location (i.e. a public warehouse holding a Type 14 license) when working out of the home. If not working out of the home then the 17/20 licenses must be held at the delivery location (i.e. a privately owned warehouse). If all operations are conducted out of a privately owned warehouse location, there is no need for a Type 14 at that location.

A person who wishes to import and sell distilled spirits to wholesalers only should apply to this Department for a distilled spirits importer's general (Type 13) license. To import and sell distilled spirits to retailers and wholesalers, a distilled spirits importer (Type 12) license and a distilled spirits wholesaler (Type 18) license are required. On the other hand, if a person merely wishes to sell to California licensed importers or wholesalers and will not be establishing a business in California in that representatives would only be in the state on a sporadic basis to make general arrangements or to do general missionary work, and he/she will not warehouse or import alcoholic beverages into California, no licenses would be required.

Alcoholic beverages can be brought into California only by common carriers and only when the beverages are consigned to a licensed importer, and only when consigned to the premises of the licensed importer or to a licensed importer or customs broker at the premises of a public warehouse licensed by this Department. Section 32109 of the Revenue and Taxation Code provides that common carriers (except railroad and steamship companies) before engaging in the business of transporting shipments of alcoholic beverages into this state must register with the California Board of Equalization and make application for an interstate alcoholic beverage transporter's permit. Direct shipment of alcoholic beverages to California retailers and consumers is prohibited.

Applications for licenses are obtained from the [district office](#) having jurisdiction over the geographical location of the business.

MEDIA ISSUES RELATING TO RETAIL ALCOHOLIC BEVERAGE LICENSES

Price, Items/"Happy Hour"

Retail licensees may advertise the sale and service of alcoholic beverages. They may advertise drink prices, brand names (provided they are paying the entire cost for the ad), promotions, and "happy hour" information (prices, times, brands, etc.). While drinks may be advertised at reduced prices, these specially-priced drinks cannot be made available only to certain groups of persons (e.g., Ladies' Night specials). This violates Business and Professions Code Section 125.6.

Free/Complimentary Alcoholic Beverages

Retailers cannot offer complimentary or free alcoholic beverages, but may offer packages that include alcoholic beverages, provided the total charge to the customer covers their cost of acquisition (to prevent a free goods violation).

"2 for 1", "Buy 1, Get 1 Free"

Retailers cannot offer alcoholic beverages for on-premises consumption at "two for the price of one," "buy one, get one free," "all you can drink," or under any other scheme where the express or implied meaning is that one customer, in order to receive a reduced price, would be required to purchase more than one drink at one time.

Retailer Responsibility

The retail licensee is responsible for all activities at their licensed premises, whether or not a radio station indicates that they are "hosting" an event at the licensed premises.

Non-Retailer Advertising Permitted

Manufacturers, importers and distributors (wholesalers) of alcoholic beverages may use broadcast media to advertise their products provided such advertising does not violate any statutory provision in the ABC Act or business regulations of ABC.

Retailer/Non-Retailer "Joint Promotions" Not Permitted

Non-retailers are prohibited from advertising in conjunction with retail licensees and from cooperatively paying for any ad with a retail licensee.

"Tied-House" Statutes

Business and Professions Code Sections 25500, 25501 and 25502 prohibit suppliers of alcoholic beverages (e.g., brewers, distillers, winegrowers, importers, distributors, etc.) from furnishing, giving or lending money or other thing of value, directly or indirectly, to a retail licensee or his/her employee(s).

Use of Retailers Name in Non-Retailer Advertising Prohibited

California's tied-house statutes and ABC Rule 106, prohibit joint (cooperative) advertising between a supplier and a retailer. A radio or television station affiliated with an alcoholic beverage supplier, acting in conjunction with or on behalf of the supplier, and/or are being compensated in any way by the supplier, is considered to be an agent of the supplier. As the agent of the supplier, any unlawful activity committed by the unlicensed media entity will be imputed to the alcoholic beverage supplier as if the supplier had directly committed the violation.

Brand Name May Be Included in Retailer Advertising

A retail licensee may include the brand name of a beer, wine, or distilled spirits in its advertising provided that the retailer has not been compensated in any way, directly or indirectly, by the manufacturer, importer or distributor of that particular alcoholic beverage.

Event Promotion by a Non-Retail Licensee

Alcoholic beverage suppliers cannot advertise an event to take place at a retailer's premises, or arrange to have their brand in the title of a retailer's event as a result of a purchase, trade, or *other arrangement*. *Other arrangement* would include "promo" mentions promised the alcoholic beverage supplier as part of an ad buy. If a supplier directs a station to tie its brand name to a retailer event, the station is acting as an agent of the supplier, even if no money exchange or trade has occurred. This would be considered "joint advertising" and is prohibited.

Event Sponsorship by Non-Retail Licensee at Retail Premises

Generally, suppliers of alcoholic beverages cannot sponsor events at retail licensed premises. There are some statutory exceptions contained in the ABC Act for particular venues, such as certain arenas, stadiums, etc. Also, where the retail license is not the venue owner or operator (e.g., the retailer is a concessionaire only) alcoholic beverage suppliers may pay money to advertise the venue.

Sponsorship of Station Concert Hotlines by Non-Retailers

Alcoholic beverage suppliers cannot buy title sponsorship of "Hot Lines" or "Event Lines" from radio stations, which listeners call to hear a listing of events at retail locations, nor may they be referenced as a sponsor of such "Lines."

Non-Retail Licensee Sponsored Contests

Alcoholic beverage suppliers may advertise contests or sweepstakes promotions, noting that entry forms "are available wherever their products are displayed," or in other generic terms, but cannot identify specific retail-licensed locations.

Prize Limitations

ABC Rule 106 limits the monetary value of prizes given away in contests or sweepstakes sponsored by non-retail licensees (e.g., \$.25 if beer-related, \$1 if wine-related, and \$5 if distilled spirits-related). Retail licensees must also adhere to these monetary limitations if the sweepstakes or contest is done in connection with the advertising of the retailer's alcoholic beverage business.

Business and Professions Code Section 25600 of the ABC Act prohibits licensees from, directly or indirectly, giving any premium, gift of free goods in connection with the sale or distribution of an alcoholic beverage. The California Court of Appeal ruled in 1988 that "distribution" includes advertising or promoting as well as the merchandising of alcoholic beverages. Stations who advertise contests or sweepstakes on behalf of a retailer or supplier cannot give away prizes whose values exceeds the rule's monetary limits, regardless if the station has paid for the prizes because the station is acting as the *agent* of the licensee and, therefore, the licensee will have *indirectly* given away the ineligible prize.

PRIVATE PARTIES

Section 23399.1 of the California Business & Professions Code explains the circumstances when an alcoholic beverage license is not required.

23399.1. No license or permit shall be required for the serving and otherwise disposing of alcoholic beverages where all of the following conditions prevail:

1. That there is no sale of an alcoholic beverage.
2. That the premises are not open to the general public during the time alcoholic beverages are served, consumed or otherwise disposed of.
3. That the premises are not maintained for the purpose of keeping, serving, consuming or otherwise disposing of alcoholic beverages.

The referenced statute essentially defines a "private party" where three separate elements must be present: (1) there is no sale of an alcoholic beverage; (2) that the venue is not open to the general public; and (3) that the subject venue is not maintained for the purpose of keeping, serving, consuming or otherwise disposing of alcoholic beverages.

If a proposed event meets the statutory definition of a "private party", then no license from the ABC is required.

Be aware that the definition of "sale" includes indirect transactions other than merely paying for an individual glass or cup of alcohol. For instance, if an admission fee is charged or there is a charge for food and the alcohol is included, but not separately charged, an ABC license is required.

If a license is required for a particular event, the Department is authorized to issue Special Daily licenses for the temporary sale of alcoholic beverages, but only to qualified non-profit organizations.

If a license is required, or you have a question about a particular event, you should contact the ABC [district office](#) closest to where the event will occur.

RECORDS

Records of alcoholic beverage sales transactions should be kept separate from non-alcoholic beverage sales records, and should be kept for a period of three years.

Maintain Alcoholic Beverage License Information with Records

Business and Professions Code Section 23300 requires sellers of alcoholic beverages to obtain an alcoholic beverage license. Distributors must determine that a retail licensee's alcoholic beverage license is valid before selling alcoholic beverages to that retailer. Distributors should maintain license numbers and license status changes with their customer records in order to avoid making sales to unlicensed persons.

RETAILER-TO-RETAILER PURCHASES OF ALCOHOLIC BEVERAGES

Business and Professions Code Section 23402 requires permanent retail on- and off-sale licensees to purchase alcoholic beverages for resale from wholesalers, manufacturers, winegrowers, or rectifiers. Daily On-Sale General licensees must purchase distilled spirits from off-sale general retail license holders. Please note that large warehouse stores such as Costco, Sam's Club, etc. are considered *retailers* and state law prohibits retailers from selling alcoholic beverages for resale, except to holders of a Daily On-Sale General license.

RETURNS OF ALCOHOL BY CONSUMERS TO RETAILERS

Returns of all types of alcoholic beverages by consumers to sellers were once ruled to be illegal under both state and federal law. In 1961, the Federal Government approved the return by consumers of alcoholic beverages which were spoiled, deteriorated, contaminated, or otherwise unfit for human consumption.

This approval was made on the condition that there would be a bottle-for-bottle exchange or cash refund for the unsatisfactory merchandise. It was necessary for a consumer to bring back a partially emptied bottle or a bottle which clearly showed deterioration of the product, such as sediment, to qualify for the refund. The Department adopted the federal policy that same year.

In 1995, Section 25600 was amended to allow the return (for refund or exchange) of alcoholic beverages to the seller by dissatisfied consumers. The advertising of "money-back guarantees" by retailers is specifically disapproved.

Please note: State law does not require the seller to accept a return or make an exchange of alcoholic beverages. This is discretionary with the licensee.

Caution: A consumer cannot overbuy for a party and then return any of the unused alcoholic beverages. Neither can the recipient of a gift exchange it for other merchandise or be given a credit, because the recipient is not returning alcoholic beverages; If the retailer gave anything of value for the beverages, the retailer would be buying from other than a wholesaler.

ROYALTY PAYMENTS BY RETAILERS TO SUPPLIERS FOR USE OF TRADE NAME

It is permissible for retailers to use trade names associated with alcohol manufacturers provided that the royalty paid by the retailer to the manufacturer is full market value and there is no money or any other thing of value given to the retailer in association with the use of the supplier's name. There can be no free advertising, no free alcohol, no free promotions etc done for the benefit of the retailer by the supplier. When the retailer pays the royalty, the name association alone is not considered to be a thing of value.

SALES BELOW COST

Business and Professions Code Section 17043 prohibits sales below cost “for the purpose of injuring competitors or destroying competition.” This section does not apply to closeout sales that are made at below cost for the purpose of liquidating stock, and not for purposes of injuring competitors or destroying competition.

Violations of Business and Professions Code Section 17043 carry civil penalties. A competitor would have to bring suit under unfair trade practices provisions. ABC has no direct enforcement authority under these provisions.

Closeout prices for beer must be posted with the Price Posting Unit of ABC in order to comply with Business and Professions Code Section 25000 regarding Price Posting.

SALES OF BEER “TO GO”/GROWLERS

Retail Licenses (Except the Type 75 Brewpub-Restaurant License):

Section 23401 grants certain off sale privileges to on sale licenses which allow beverages to be sold “to go”:

23401. An on-sale general license, with respect to beer and wine, and any on-sale license, with respect to the particular beverage or beverages mentioned in the license, also authorizes the exercise of the rights and privileges granted by an off-sale beer and wine license; provided, however, that a daily on-sale general license issued pursuant to Section 24045.1 shall not authorize the foregoing rights and privileges. None of the licensees mentioned in this section may, by reason of any license mentioned in this section, label, bottle, package, or refill any package with any alcoholic beverage.

For the definition of an “original sealed container” see Section 23028 for guidance. Section 23028 is as follows:

23028. “Package” means any container or receptacle used for holding alcoholic beverages which is corked or sealed with a stub, stopper, cap, or in any other manner.

As stated in 23401, on sale licensees may sell “packages” to go but the law has been interpreted to prohibit any package from being refilled. The interpretation reads as follows: “An on sale licensee may not sell draft beer in covered buckets or other containers to be taken off the licensed premises.”

Non-Retail Licenses (and Type 75 Brewpub-Restaurant License):

Beer manufacturers or licensees operating under the privileges of a Type 75 (Brewpub-Restaurant) license may fill an original bottle or container with beer and sell it to a consumer for consumption off the premises where sold. A consumer may return the bottle or container to the manufacturer to be refilled and resold to that consumer. This privilege applies only to Type 1, Type 75 or Type 23 licenses. This filling (or refilling) privilege does not apply to a Type 41, Type 47, Type 48 or any other retail license.

One issue that arises is with Section 25200 which mandates certain labeling requirements for beer containers. These requirements also apply to containers returned by consumers for refilling. Section 25200 reads as follows:

25200 All beer sold in this State shall have a label affixed to the package or container thereof, upon which shall appear the true and correct name and address of the manufacturer of the beer, and also the true and correct name of the bottler of the beer if other than the manufacturer. No manufacturer, importer, or wholesaler of beer shall use a container or carton as a package or container of a beer other than such beer as is manufactured by the manufacturer whose name or brand of beer appears upon the container or carton, or use as a package or container of a beer a container or carton which bears the name of a manufacturer of beer or the brand of any beer other than those of the manufacturer of the beer contained in the container or carton.

All containers (whether initially sold or refilled by the manufacturer) must leave the manufacturer’s premises with approved labeling.

Possible Health and Safety Code violations that may apply to filling containers with beer for off sale consumption should be addressed with the appropriate regulatory agency.

SAMPLES

Suppliers may give samples of alcoholic beverages to licensees and their employees who are eligible to purchase the alcoholic beverage, if the licensee has not previously purchased the product, and for the sole purpose of permitting the licensee to determine the grade, type, and quality of the alcoholic beverage. Samples of beer must not exceed quantities of one bottle or can opened on the premises, wine samples must not exceed quantities of 1 quart or liter, and distilled spirits must not exceed quantities of 500 ml or smallest size marketed. Detailed records must be kept for three years. (Business and Professions Code Section 23386 and ABC Rule 52)

Brewers (but not distributors) may give samples to consumers at Beer Tastings (1) at the brewer's premise, or (2) at an event sponsored by a nonprofit organization for persons affiliated with the organization (Business and Professions Code Section 23357.3 and ABC Rule 53.5).

Retailers may not give away free samples of beer to consumers. Brewers and distributors may not give away free samples in connection with the sale of alcoholic beverages, except as noted above.

On-sale retail licensees licensed to sell wine or distilled spirits may offer instruction on the wine and distilled spirits by furnishing not more than three tastings to any individual in one day. A single tasting of distilled spirits may not exceed one-quarter of an ounce; a single tasting of wine may not exceed one ounce.

Distributors may host educational seminars for licensees and their employees in order to familiarize staff with the products that will be served at the licensed premises. Educational seminars may be held at the retailer's licensed premise or at the distributor's premises. (Business and Professions Code Sections 23025, 23386, 25750, 25752 and ABC Rule 52.)

SIGNAGE

Suppliers may furnish interior signs advertising alcoholic beverages sold by that supplier to a retailer for use within on-sale or off-sale premises at no charge (Business and Professions Code Section 25611.1 and ABC Rule 106(c)(1)). Permitted signs must consist of conspicuous brand advertising. Signs that are customized to pertain to a specific retailer must be sold at current market price, including the cost of customization. Interior signs remain the property of a supplier unless sold or given to a retail licensee.

Suppliers **must sell exterior signs** to retail licensees at the current market price for such signage (Business and Professions Code Sections 25503.1(b) and 25611.1(c), and ABC Rule 106(c)(2)).

Business and Professions Code Section 25611.1(c), and ABC Rule 106(c)(2) states that a distributor may not hang exterior signage, "...nor shall any supplier place such signs [advertising alcoholic beverages] on or adjacent to any retail premises or a parking lot used in conjunction with any premises." A retailer may hire the employee of a distributor, at a fair wage, to install signs.

Suppliers may provide nonpermanent interior or exterior signs or banners to temporary licensees at no charge (ABC Rule 106(h)).

Alcoholic beverage advertisement may not be placed on a fuel island or across any public thoroughfare, such as a street or sidewalk. No self-illuminating signs advertising beer or wine may be located on buildings or windows concurrent with the retail sale of motor vehicle fuel. Note that it is advisable for suppliers to maintain on file an agreement signed by the retailer (Business and Professions Code Section 23790.5).

(Also see Banners)

Exterior and Interior

Exterior signs are signs that are located outside of the licensed premises. (Exception: signs that are attached to walls or buildings and which face an outdoor patio or similar area that is part of the licensed premises. Such signs are considered "interior" signs even though they may be physically outside the building.)

Exterior signs must either be sold or rented by the alcoholic beverage supplier to the retail licensee. A supplier may not lawfully furnish an exterior sign to a permanent retailer for no charge.

Interior signs are signs that are designed for display inside a licensed premises. Interior signs may be placed inside the window(s) and which are visible from outside the premises.

Interior signs may be sold, rented, or given away to retail licensees (on-sale or off-sale). Interior or exterior signs that are “personalized” to the retail account must be sold or rented.

Size Limitations

630 sq. inches maximum size for signs advertising wine or distilled spirits for use in on-sale premises. No size restrictions for signs advertising malt beverages or for any sign for use in off-sale premises.

Signs with Utilitarian Value

No sign advertising wine or distilled spirits may have a secondary value. Such signs may be of value only as advertising. Example: A sign advertising whisky which doubles as a dart board would be a prohibited interior sign. This sign could be sold or rented to the retailer.

SOJU

Based upon an analysis of the express language of Business and Professions Code section 23398.5, together with the absence of any contrary intent expressed in the legislative history of this provision, the Department believes that the phrase “Soju, an imported Korean alcoholic beverage . . .” is descriptive in nature, rather than definitional. However, there are some definitional components to this as well — namely, that the soju must be imported into the United States, it must be no more than 24 percent alcohol by volume, and it must be derived from agricultural products.

Based upon this analysis, the following points are made:

- Soju sold pursuant to this statutory provision must be imported into the United States;
- While the soju must be imported, there is no further limitation on where soju may be produced or bottled; and
- There is no statutory provision that the label state that the product is “Korean soju,” however the product label must state “soju” and no other derivative of that word such as “shochu.”

SWEEPSTAKES

On January 30, 2001, the Third District Appellate Court in Sacramento ruled that sweepstakes promotions that award prizes with values in excess of financial limits contained in Business and Professions Code Section 25600 and ABC Rule 106 - \$.25 for beer, \$1 for wine and \$5 for distilled spirits – to California residents are unlawful.

(Coors Brewing Company v. Jay R. Stroh, Dept. of Alcoholic Beverage Control)

Specifically with regard to the marketing of alcoholic beverages by any means, including sweepstakes, Business and Professions Code Section 25600 requires, in part, that “[n]o licensee shall, directly or indirectly, give any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage...” This provision has existed for many years, and has been interpreted to include any activities by licensees in advertising or promoting alcoholic beverages. While the Department may create regulations permitting certain activities which would otherwise be prohibited pursuant to this provision, the Legislature has placed limits on that ability. In particular, the Department is without authority to enact any regulations which would permit any licensee to give any premium, gift, or free goods of “greater than inconsequential value.” (Business and Professions Code Section 25600(b)) “Inconsequential value” is defined as \$.25 for beer, \$1 for wine, and \$5 for distilled spirits. The specific regulation at issue is ABC Rule 106.

TABLE TENTS

A distributor may provide to a retailer, at no charge, table tents if the only message on the printed card is alcoholic beverage advertising pertaining to a distributor’s products. However, if the retailer’s name, menu specials or other promotional activities appear as part of the written text, the distributor must sell the table tents at current market value, including the cost of customization.

Suppliers may also furnish acrylic table tent holders free of charge as long as they are brand-identified and meet the requirements of signage permitted to be furnished to retail licensees.

TAPPING EQUIPMENT

Distributors may provide tapping equipment (specified in Business and Professions Code Section 25510 as kegs, tapping heads, air lines, alcoholic beverage lines, clamps, washers, coupling devices, rods, vents, filters, valves, and keg spacers) for an initial installation in a new on-sale licensed account or for a changeover of equipment from one tapping system to another.

Suppliers may service, repair and replace the above items of equipment from time to time as necessary. Such tapping equipment shall remain the property of the distributor.

Faucets, regulators, gauges, standards, refrigeration and glassware must be sold at current market value to retail licensees.

A distributor may provide draft beer pumps and/or jockey boxes free of charge to temporary one-day licensees, but not to permanent licensees. Other equipment must be sold or rented at fair market value to any licensee.

Distributors may provide tapping equipment only to on-sale licensees. They may not provide tapping equipment to off-sale licensees.

(Business and Professions Code Sections 25504, 25510, 25659.5)

TEMPORARY ONE-DAY LICENSES/FESTIVALS

Temporary licenses may only be issued to nonprofit organizations, including a charitable, civic, cultural, fraternal, patriotic, political, religious, social or amateur sports organization, for sales to members or guests of members of the organization at the site of and during an organized picnic, social gathering, or similar function of the organization; or for sales to the general public from a premises temporarily occupied at the site of and during a county fair, civic celebration or similar event, or at a designated premises and during a fund-raising event sponsored by a nonprofit charitable, civic, cultural, fraternal, patriotic, political, religious or amateur sports organization. Although they are commonly called “one-day licenses”, they may be issued for a period of one to three days.

The alcoholic beverage specified on the license may be delivered to the licensee within three days of the effective date of the license. Upon a showing of good cause, the department may approve earlier delivery. Temporary on-sale beer or on-sale wine licensees must purchase alcoholic beverages from a licensee authorized to sell alcoholic beverages for resale (i.e., a wholesaler, winegrower, or beer manufacturer). The holder of a Daily On-Sale General license must purchase distilled spirits from an off-sale general licensee.

A wholesaler may lend, sell or rent draft pumps, ice boxes, and other tapping accessories to temporary licensees. Alcoholic beverages may be returned to the wholesaler for refund or credit after the event or function.

Temporary licenses generally do not include off-sale privileges.

A beer and/or wine festival refers to a public tasting event held at a large-capacity venue such as a fairground, convention center, etc. where numerous beer manufacturers and/or winegrowers are represented.

ABC Rule 53 governs “winetastings” and ABC Rule 53.5 governs “beer tastings.”

The respective rules allow winegrowers and beer manufacturers to conduct free tastings on their licensed premises. They may also charge for tastings on their licensed premises.

Both winegrowers and beer manufacturers may assist nonprofit organizations to conduct wine and beer tastings at festivals open to the public held off of the winegrower’s or beer manufacturer’s licensed premises. The nonprofit organization must obtain a special daily temporary on-sale beer and/or wine license from ABC to conduct such off-site tastings. All samples or tastes must be sold at a festival event.

Physical arrangements at festivals can vary. Often, each winegrower and/or beer manufacturer will have its own booth where only its wine and/or beer products can be purchased. Sometimes, there is a single area where all of the winegrowers and/or manufacturers’ products are dispensed.

While winegrowers and beer manufacturers may pour wine and/or beer samples at festivals, it is recommended that members of the nonprofit organization be present as well since the rules state that a winegrower and/or beer manufacturer may assist the holder of a temporary license in conducting a wine and/or beer tasting.

A nonprofit organization who obtains a temporary license must receive all of the net proceeds from the sale of wine, beer and/or distilled spirits. If a separate admission is charged and/or advertising specialties (T-shirts, hats, etc.) are sold, the net profits from these sales may go to someone other than the non-profit organization. However, if the admission charge entitles patrons to obtain wine, beer and/or distilled spirits then the net proceeds attributed to the sale of alcoholic beverages must go to the nonprofit organization.

Winegrowers and beer manufacturers may sell wine and/or beer to nonprofit organizations holding a temporary license. Winegrowers and/or beer manufacturers may also give wine and/or beer to a temporary licensee but only if such temporary licensee is a nonprofit corporation or association exempt from the payment of income taxes under the Internal Revenue Code. Similarly, a distilled spirits manufacturer or a distilled spirits manufacturer's agent may give or sell distilled spirits to a nonprofit charitable corporation or association exempt from the payment of income tax. (Section 25503.9)

An out-of-state beer manufacturer who holds an out-of-state beer manufacturer's certificate (Type 26) may assist nonprofit organizations to conduct a beer tasting. California Winegrower's Agent (Type 27) licensees may assist nonprofit organizations to conduct a wine tasting.

Wholesalers are not permitted to conduct wine or beer tastings.

A Type 75 (Brewpub-restaurant) license is an on-sale retail license that has a manufacturing privilege. This license does not, however, have the same privileges as a beer manufacturer's license (Type 01 or Type 23). A Type 75 licensee may not give away free tastes of its products on or off its licensed premises. A Type 75 licensee may not assist a nonprofit organization to conduct a beer tasting at a festival or other fundraising event.

TIED HOUSE OWNERSHIPS - OUT OF STATE WHOLESALER OWNING INTEREST IN CALIFORNIA RETAILER

An out of state wholesaler located within the United States, Canada or Mexico is restricted from holding any ownership interest in any California on-sale or off-sale retail license. This does not apply to entities located in a territory or possession of the United States, to businesses located in foreign countries (other than Canada or Mexico) or to licensees granted an exception under 25503 et seq.

23021. *"Wholesaler" means every person other than a manufacturer, winegrower or rectifier who is engaged in business as a jobber or wholesale merchant, dealing in alcoholic beverages, in an area within the United States other than a territory or possession of the United States, or within a foreign country having common boundaries with any state of the United States.*

25500. *(a) No manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any such person shall:*

(1) Hold the ownership, directly or indirectly, of any interest in any on-sale license.

25502. *(a) No manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any such person, shall, except as authorized by this division:*

(1) Hold the ownership, directly or indirectly, of any interest in an off-sale license.

Exception for wine-only Types 17/20 or Types 9/17/20 combination: An out-of-state wholesaler could hold an interest under 23378.2 in an off-sale retail beer and wine license (Type 20) when combined with a wholesale license in this state dealing in wine only.

In 1972, A.G. Opinion #CV 71/358 confirmed that 25500 and 25502 applied to in-state as well as out-of-state entities.

Note: An in-state wholesale licensee may hold an interest in an out-of-state retailer.

TIED-HOUSE RESTRICTIONS AS APPLIED TO OUT-OF-STATE SUPPLIERS*

Distilled Spirits Manufacturer	May hold on-sale license?	Yes	<input checked="" type="checkbox"/> No
	May hold off-sale license?	Yes	<input checked="" type="checkbox"/> No
Winegrower	May hold on-sale license?	<input checked="" type="checkbox"/> Yes	No
	(Subject to "Undertaking" requirement-§25503.15(a))		
	May hold off-sale license?	Yes	<input checked="" type="checkbox"/> No
Beer Manufacturer**	May hold on-sale license?	Yes	<input checked="" type="checkbox"/> No
	May hold off-sale license?	Yes	<input checked="" type="checkbox"/> No
Wholesaler***	May hold on-sale license?	Yes	<input checked="" type="checkbox"/> No
	May hold off-sale license?	Yes	<input checked="" type="checkbox"/> No

* The information contained in the chart applies generally and does not consider any legislated exceptions.

** Beer manufacturers who hold an Out-of-State Beer Manufacturer's Certificate (Type 26) may hold an interest in a Type 20 license.

*** "Wholesaler" is defined in Section 23021, B&P Code. California's tied-house restrictions do not apply to wholesalers whose businesses are located outside the United States (except Canada or Mexico) or in any U.S. territory or possession.

TRADE SPENDING

ABC's position regarding this practice is quite simple. Generally, we have no objection to a supplier (manufacturer, importer, wholesaler, etc.) sending costumed (or non-costumed) persons into on-sale or off-sale premises on an unannounced basis to approach consumers and talk about their product(s) and hand out permitted point-of-sale material. However, the furnishing of free alcoholic beverages to consumers is NOT allowed. That practice violates Business and Professions Code Section 25600. (See Section 25503.5 for limited consumer sampling exceptions).

Also, ABC does not want the retailer to pre-announce the arrival of these supplier representatives other than via interior signs visible only to regular patrons. In other words, no media advertising (radio, newspapers, handbills, etc.) and no exterior signage on the outside of the premises. However, if the retailer is willing to pay the appearance fee(s) of the supplier representatives and all of the other costs associated with such appearance then ABC will permit the retailer to pre-announce the promotional event. As a practical matter that rarely occurs.

UNDERTAKINGS

A winegrower who manufactures, produces, bottles, processes, imports or sells *wine only* may hold the ownership of *any* interest in *any* on-sale license or the business conducted under that license. "Winegrower" includes an officer, director, or agent of the winegrower. An undertaking *is required* unless the licensed winegrower, or any winegrower who has a wholesale license, meets all of the following conditions:

1. The on-sale licensed premises are licensed as a bona fide public eating place (defined in Section 23038) **or** a bona fide bed and breakfast inn (defined in Section 24045.11).
2. The on-sale licensee must purchase all alcoholic beverages sold and served at the on-sale premises from CA licensed wholesalers, other than from the licensed winegrower who has a wholesale license and an interest in an on-sale license.*

3. The licensed winegrower and any officer, director, or agent of the winegrower, whether individually or in the aggregate, do not sell and serve the wine products produced or bottled under any brand or trade name owned by that winegrower through more than two on-sale licensed premises in which any of them holds an ownership interest.
4. The number of wine items by brand offered for sale by the on-sale licensee that are produced, bottled, processed, imported, or sold by the licensed winegrower or by any person holding any interest in the winegrower does not exceed 15 percent of the total wine items by brand listed and offered for sale in the bona fide eating place selling and serving that wine. This 15% restriction does not apply to a bona fide bed and breakfast inn.

*The alcoholic beverage purchase restriction outlined in Paragraph #2 (above) is waived if one of the following conditions is met:

- A. The wine purchased is produced or bottled by, or produced and packaged for, the same licensed winegrower that holds an interest in the on-sale license.

-OR-

- B. The wine is produced or bottled by, and is purchased from, a licensed winegrower who sells no more than 125,000 gallons of wine per year for distribution in this state under all brands or trade names owned by that winegrower.

-OR-

- C. The wine is purchased by an on-sale licensee in whose on-sale license a licensed winegrower holds an interest, provided that the winegrower sells no more than 125,000 gallons of wine per year for distribution in this state under all brands or trade names owned by that winegrower

UNLICENSED BARTENDERS FOR PRIVATE PARTIES

Unlicensed bartenders are permissible for parties but the host of the party can only pay the bartender for the services of bartending and not for alcohol sales. Hired bartenders cannot act like licensed caterers, meaning they cannot bring alcohol and charge by the glass, they cannot pick up alcohol for the customer and then be reimbursed, and they cannot take a pre-paid order from a customer and pick up the alcohol. The host of the party must purchase all of the alcohol for the party in advance. The bartender can bring equipment, be paid a flat fee, and collect tips for services only.

VENDING MACHINES

The sale or furnishing of alcoholic beverages by the use of vending machines is usually problematic and has not been widely permitted in California as it is deemed to be contrary to public health and welfare and would result in enforcement problems for this Department and local police agencies.

In the past, ABC has conditionally approved the use of a machine that dispenses cold packaged beer. Our approval was based upon the following representations and descriptions:

1. The unit would be controlled electronically from a remote source.
2. A person desiring to purchase beer by the individual can or bottle would necessarily approach the person in charge of the electronic control unit, for instance a motel clerk, and request to purchase the beer; that at or during this time the clerk would have the opportunity to determine if the would-be purchaser was either a minor or obviously intoxicated; and that upon being paid the clerk would electronically initiate the beer sale at the dispensing unit when the approved purchaser approached it.
3. The machine would be located in the line of sight of the clerk, and the purchaser as well as the machine would be under the direct observation of the clerk at all times during use. (ABC will not approve the use of a closed circuit video system or a "debit card" access system as a substitute for the direct observation of the purchaser. We believe that to allow the use of either system would undermine the control needed to prevent violations of the ABC Act, e.g., furnishing beer to minors or intoxicated patrons.)
4. The machine would only be used in properly licensed retail establishments.
5. Beer dispensed from the machine must be purchased by the retail licensee and the machine must be stocked by the licensee.
6. The machine user must comply with all applicable ABC laws and regulations.
7. The machine would be leased to the retail licensee and the lease arrangement would be an arm's length transaction between the lessor and lessee; and that the lessor would charge a fixed monthly lease payment plus a service fee, not to exceed 10% of the machine's gross sales.

WINE EVENT SALES PERMIT

To use the privileges of the wine sales event permit, approval from the ABC is required for each event. This approval is obtained through the submission of Form ABC-222, Wine Sales Event Authorization, to a local ABC office. There is no fee required for each event authorization; however, the city and county where the event is being held must be notified.

Winegrowers are reminded that Business and Professions Code Section 23399.6 contains a number of requirements or limitations as summarized below:

- Applicant must hold an active winegrower's license
- The permit authorizes the sale of bottled wine at festivals, state, county, district or citrus fruit fairs, and at civic or cultural celebrations and the event shall be sponsored by an organization that is exempt from taxation under Revenue and Taxation Code Section 23701(a), including state designated fairs as specified in Revenue and Taxation Code Section 19418, or exempt from taxation under Revenue and Taxation Code Section 23701(b), 23701(d), 23701(e), 23701(k), 23701(l), 23701(r) or 23701(w)
- The sale of the wine shall not be the primary purpose of the event, and the sale shall be for consumption off the premises where sold. No winetasting is allowed under this permit
- The permit shall be valid for a maximum of five consecutive days during the event period
- A wine sales event permit may not be used more than two times a month at a particular location
- At all events, a copy of the wine sales permit shall be maintained
- A licensee holding a wine sales event permit may not sell more than 1,250 gallons of wine per event
- A licensee may not sell more than 5,000 gallons of wine annually pursuant to this permit
- A licensee that is eligible to receive a certified farmers' market sales permit under Business and Professions Code Section 23399.4 and a wine sales event permit may not, under both permits collectively, sell more than a total of 5,000 gallons of wine annually
- The licensee shall annually report to ABC the total gallons of wine sold by that licensee under this permit

WINETASTINGS – AMOUNT OF SAMPLE

Neither the Alcoholic Beverage Control Act (Division 9 of the CA Business and Professions Code) nor the California Code of Regulations specifically defines how much wine constitutes a "taste" or "sample" with respect to winetastings conducted under Rule 53 of the California Code of Regulations.

Rule 53 defines a "winetasting" as the presentation of samples of one or more wines, representing one or more wineries or industry labels, to a group of consumers for the purposes of acquainting the tasters with the characteristics of the wine or wines tasted. This type of tasting generally occurs at a winegrower's place of production or an off-site tasting room operated by and for the winegrower. A winery may either sell or give away these samples or tastes of its wine products. Common sense dictates that a person need not be served very much wine to make a judgment concerning the particular characteristics of that wine product.

On the other hand, a winery that operates a bona fide eating place (restaurant) on its licensed premises will generally sell full glasses of wine as part of its food and beverage service offered to the public. A separate license is not required for a winery to perform this function. Please refer to Section 23358 of the Act for more information on winegrower license privileges.

Please be advised that wineries furnishing or selling excessive amounts of wine to customers under the guise of conducting legitimate winetastings are, in fact, exceeding the privileges of their license. Additionally, Section 25602, B&P Code, makes it a misdemeanor for any person to sell, furnish, give, or cause to be sold, furnished, or given away, any alcoholic beverage to any obviously intoxicated person.

It should be noted that one of the purposes of the ABC Act is to promote temperance in the use and consumption of alcoholic beverages. That would not be the case where employees of winegrowers are serving large quantities of wine to customers that likely leads to their intoxication. Such conduct is irresponsible and should never be tolerated by any licensee.